

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ALBERT GILLIS

Defendant-Appellant.

UNPUBLISHED

June 13, 2006

No. 245012

St. Clair Circuit Court

LC No. 02-000601-FC

ON REMAND

Before: Jansen, P.J., and Meter and Cooper, JJ.

PER CURIAM.

A jury convicted defendant of two counts of first-degree felony murder, MCL 750.316(1)(b), based on the underlying felony of home invasion, MCL 750.110a. The trial court sentenced him to two terms of life imprisonment without the possibility of parole. Defendant appealed to this Court, which reversed defendant's convictions. *People v Gillis*, unpublished opinion per curiam of the Court of Appeals, issued August 17, 2004 (Docket No. 245012) (*Gillis I*), slip op at p 1.¹ The majority opinion held that the trial court should have quashed the information charging defendant with felony murder because defendant had already escaped from the scene of the home invasion at the time he collided his vehicle into the two victims and killed them. *Id.*, slip op at pp 3-4. The majority opinion further held that the trial court should have instructed the jury with regard to the lesser offense of involuntary manslaughter. *Id.*, slip op at p 5.

After the prosecutor filed an application for leave to appeal in the Supreme Court, that Court granted the application and subsequently issued an opinion reversing the judgment of the Court of Appeals. *People v Gillis*, 474 Mich 105, 108-109; 712 NW2d 419 (2006) (*Gillis II*). The Supreme Court stated, in part:

We conclude that “perpetration” encompasses acts by a defendant that occur outside the definitional elements of the predicate felony and includes acts that occur during the unbroken chain of events surrounding that felony. Because defendant at the time of the collision was attempting to escape detection after

¹ Judge Meter would have affirmed the convictions. *Gillis I, supra*, slip op at pp 1-2 (Meter, J., concurring in part and dissenting in part).

having been identified during the home invasion, a reasonable juror could conclude that he was still “in the perpetration of” the home invasion.^[2] We also conclude that the trial court did not err in failing to instruct on involuntary manslaughter, because no rational view of the evidence could support a finding that defendant acted in a grossly negligent manner or had an intent to injure without malice. Accordingly we reverse the judgment of the Court of Appeals and remand this case to that Court for consideration of defendant’s other issues. [*Gillis II*, *supra* at 109.]

After a consideration of these “other issues,” we affirm defendant’s convictions.

First, we note that several of the other issues defendant raised in his appeal in this Court were addressed in parts IV and V of *Gillis I*, and we hereby adopt those portions of *Gillis I* in their entirety. See *Gillis I*, *supra*, slip op at pp 5-8. The only other issues properly raised by defendant in this Court and not addressed in *Gillis I* were (1) defendant’s allegation that the trial court provided an incorrect jury instruction and (2) defendant’s allegation that insufficient evidence supported his convictions because the prosecutor did not prove the element of “malice.”³

At plaintiff’s request, and over defendant’s objection, the trial court read the following special instruction to the jury:

Actions immediately connected with the felony of home invasion in the first degree, including attempts to escape or prevent detection[,] are a continuous part of the commission or perpetration of the felony of home invasion in the first degree. Escape ceases to be a continuous part of the felony of home invasion of [sic] the first degree if and when the Defendant reaches a point of at least temporary safety.

Defendant argues that this instruction misstated the law and that the giving of the instruction virtually guaranteed that the jury would find him guilty of felony murder.

² The Supreme Court framed the issue as whether the trial court correctly denied defendant’s motion for a directed verdict, see *Gillis II*, *supra* at 137, whereas this Court framed the issue as whether the trial court correctly denied the motion to quash the information. See *Gillis I*, *supra*, slip op at p 2. Regardless of which way the issue is framed, it encompasses the same legal analysis, and the Supreme Court’s opinion in *Gillis II* is controlling.

³ In *Gillis II*, *supra* at 138 n 17, the Court stated that “[t]he Court of Appeals did not reach defendant’s other claims of instructional error -- that the trial court denied defendant’s request for instructions on first-degree fleeing and eluding (causing death) and voluntary manslaughter.” We did not do so because defendant’s appellate briefing with regard to the instructions was inadequate. See *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001) (an appellant abandons an issue to which he gives only cursory treatment). We again decline to address these issues due to inadequate briefing.

“This Court reviews jury instructions in their entirety to determine whether the trial court committed error requiring reversal.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). “Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant’s rights.” *Id.* This Court reviews a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Defendant’s argument that the trial court erroneously instructed the jury that “attempts to escape or prevent detection” were “immediately connected” to the predicate offense of home invasion is without merit. Indeed, the *Gillis II* Court, as part of its analysis, *explicitly stated* that the instruction at issue was correct. *Gillis II*, *supra* at 133. The Supreme Court’s conclusion in this regard constitutes the law of the case and thus is binding on this Court. See *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994) (“an appellate court’s decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case”). Moreover, the instruction given by the trial court was in accordance with the general holding of *Gillis II* concerning felony murder. Reversal is unwarranted.

Defendant also argues that the prosecutor did not establish beyond a reasonable doubt that defendant acted with malice at the time of the killings. In reviewing a sufficiency of the evidence question, this Court views the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004). This Court does not interfere with the jury’s role of determining the weight of the evidence or the credibility of the witnesses. See *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

Defendant’s argument that the prosecutor presented insufficient evidence to support his convictions is without merit. In *Gillis II*, *supra* at 140-141, the Supreme Court reversed this Court’s finding that defendant was entitled to a jury instruction concerning involuntary manslaughter. In so holding, our Supreme Court stated:

The Court of Appeals majority concluded that it was “possible for a rational trier of fact to determine from the evidence that defendant only possessed the mindset of gross negligence.” *Gillis [I]*, *supra*, slip op at 5. We disagree and hold that no rational juror, under these facts, could conclude that defendant’s actions were anything other than acts that “create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result.” *Mendoza*, *supra* at 540.^[4] Defendant, in his attempt to get away from Trooper Kramer, knowingly entered I-94 going the wrong way. The ramp used by defendant was clearly marked with “Do Not Enter” and “Wrong Way” signs. Further, another officer assisting in the chase crossed over the median and

⁴ *People v Mendoza*, 468 Mich 527; 664 NW2d 685 (2003).

began driving the proper way on I-94 in order to get in front of defendant. Finally, Trooper Kramer testified that he and defendant went past several vehicles on both I-94 and I-69, all of which were being driven in the correct way. This was not a circumstance where a driver, through an act of gross negligence, accidentally drove the wrong way on the highway. Rather, this defendant intentionally drove the wrong way on the freeway and continued to do so for approximately ten minutes before colliding with the Ackermans' vehicle. Trooper Kramer also testified that he was "quite certain [that oncoming traffic] would not have seen [defendant's] small white car" In fact, this fear of a potential head-on collision was Kramer's primary reason for continuing his pursuit. In other words, by driving the wrong way on the interstate on a hazy day, defendant created a "very high risk" of a head-on collision -- a collision that would certainly cause "death or great bodily harm." Further, it would be unreasonable to conclude that defendant did not know that a serious or fatal accident was the probable result of driving the wrong way on the interstate. No rational view of the evidence could support a finding of gross negligence or an intent to injure without malice. [*Gillis, supra* at 138-139.]

The Supreme Court's finding that the evidence could support only a finding that defendant acted with malice, and not in a grossly negligent fashion, constitutes the law of the case and is binding on this Court. *Herrera, supra* at 340. According to the Supreme Court in *Gillis II, supra* at 138-139, the evidence presented was sufficient to allow a jury to conclude beyond a reasonable doubt that defendant acted with malice, i.e., that he created a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result. See *People v Nowack*, 462 Mich 392, 401; 614 NW2d 78 (2000). Therefore, defendant's convictions of felony murder were supported by the requisite evidence. *Bulls, supra* at 623.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Jessica R. Cooper